

Jufazli bin Shi Ahmad v Pendakwa Raya

HIGH COURT (SHAH ALAM) — CRIMINAL APPLICATION
NO BA-43-42-10 OF 2021
NURULHUDA NUR'AINI JC
11 NOVEMBER 2021

Criminal Procedure — Appeal — Appeal against decision of sessions court — Application to transfer criminal case from Sepang Sessions Court to Kuala Lumpur Sessions Court — Whether matter should be tried in Kuala Lumpur — Communication and Multimedia Act 1998 s 233

The applicant was arrested on suspicion of committing an offence under Communication and Multimedia Act 1998 ('the Act'). He was charged under s 233(1) of the Act for improper use of applications service YouTube by uploading via his account, a video knowingly the making and initiating transmission of the video was offensive in nature with intent to annoy another person. The charge sheet was silent as to where the said act of 'initiating transmission' took place but the details as to where it was uploaded being 'Jufazli Shi Ahmad TV di pautan <https://youtu.be/DuWsHbE1mic>' and based on the submission by counsel, it was said to happen at the applicant's address of Cheras, Kuala Lumpur. However, the charging in Sepang was based on the fact that the complainant read or saw this transmitted video in Cyberjaya, Sepang. The learned sessions court judge dismissed the applicant's prayer for the matter to be transferred to the Kuala Lumpur Sessions Court. Hence, this application by the applicant seeking for this court to exercise its revisionary power to revise the decision of the Sepang Sessions Court.

Held, dismissing the application:

- (1) The purpose of s 233 of the Act was to address 'improper use of the network services or facilities' where the objective of s 233 of the Act was to eliminate obscene or offensive material from passing through these networks but yet was not to act as a total prohibition by applying a general standard of morality of the man on the street as to what amounts to 'obscene or offensive'. Under s 233(1)(a) of the Act, to determine if the material was obscene or offensive, it must be tested against the person receiving the material at the end which the transmission was directed at to satisfy the word 'another person' whilst 'any person' in s 233(1)(b) of the Act would mean anybody in general viewing the transmission. Unless and until it was seen by the person at the end, the transmission would have no form be it in s 233(1)(a) or (b) of the Act. The words 'with intent'

- A carried some duty on the prosecution to prove by available evidence the said element of the actus reus. The commission of the act to satisfy the 'with intent to annoy, abuse, threaten or harass another person' under s 233(1)(a) of the Act must be proven and the determination as to whether the content of the material, results with this outcome of 'annoy, abuse, threaten or harass' could only be known upon the other person which the transmission was directed at, reads or views the material. This only happened at the place where that other person saw this material. Section 233 of the Act was a combination of 'transmission' at the first limb of s 233 of the Act and the receiving of the said transmission by the other person, to satisfy the second limb of s 233 of the Act that the nature of the material transmitted being offensive or obscene, done with intent to annoy etc. Hence, the right locality of the charge was the Sessions Court Sepang and not Kuala Lumpur (see paras 22, 24, 28 & 32–33).

D **[Bahasa Malaysia summary]**

- E Pemohon ditahan kerana disyaki melakukan kesalahan di bawah Akta Komunikasi dan Multimedia 1998 ('Akta'). Dia didakwa di bawah s 233(1) Akta kerana penggunaan tidak wajar kemudahan aplikasi YouTube dengan memuat naik melalui akaunnya, video yang secara sedar membuat dan memulakan penghantaran video yang bersifat jelik dengan niat untuk menyakitkan hati orang lain. Kertas pertuduhan senyap di mana perbuatan 'memulakan penghantaran' itu berlaku tetapi butiran di mana ia dimuat naik adalah 'Jufazli Shi Ahmad TV di pautan <https://youtu.be/DuWsHbE1mic>' dan berdasarkan hujahan peguam, ia dikatakan berlaku di alamat pemohon di Cheras, Kuala Lumpur. Walau bagaimanapun, pertuduhan di Sepang adalah berdasarkan fakta bahawa pengadu membaca atau melihat video yang dihantar ini di Cyberjaya, Sepang. Hakim mahkamah sesyen yang bijaksana menolak permohonan pemohon agar perkara itu dipindahkan ke Mahkamah Sesyen Kuala Lumpur. Justeru, permohonan pemohon yang memohon supaya mahkamah ini menggunakan kuasa semakannya untuk menyemak semula keputusan Mahkamah Sesyen Sepang.

Diputuskan, menolak permohonan:

- H (1) Tujuan s 233 Akta adalah untuk menangani 'penggunaan tidak wajar rangkaian perkhidmatan atau kemudahan' di mana objektif s 233 Akta adalah untuk menghapuskan bahan lucah atau jelik daripada melalui rangkaian ini tetapi tidak bertindak sebagai larangan sepenuhnya dengan menggunakan standard moral umum orang biasa tentang apa yang dianggap sebagai 'lucah atau jelik'. Di bawah s 233(1)(a) Akta, untuk menentukan sama ada bahan itu lucah atau jelik, ia mesti diuji terhadap orang yang menerima bahan itu pada penghujung penghantaran yang ditujukan untuk memenuhi perkataan 'orang lain' manakala 'mana-mana orang' dalam s 233(1)(b) Akta bermaksud sesiapa sahaja

secara umum melihat penghantaran itu. Melainkan dan sehingga ia dilihat oleh orang itu pada penghujungnya, penghantaran itu tidak akan mempunyai bentuk sama ada dalam s 233(1)(a) atau (b) Akta. Perkataan ‘dengan niat’ membawa beberapa kewajipan ke atas pihak pendakwa untuk membuktikan dengan keterangan yang ada unsur actus reus tersebut. Tindakan melakukan perbuatan untuk memenuhi ‘dengan niat untuk menyakitkan hati, menganiayai, mengugut atau mengganggu orang lain’ di bawah s 233(1)(a) Akta mesti dibuktikan dan penentuan sama ada kandungan bahan itu, menghasilkan dengan hasil ‘menyakitkan hati, menganiayai, mengugut atau mengganggu’ ini hanya boleh diketahui oleh orang lain yang ditujukan, membaca atau melihat bahan tersebut. Ini hanya berlaku di tempat orang tersebut melihat bahan ini. Seksyen 233 Akta adalah gabungan ‘penghantaran’ pada bahagian pertama s 233 Akta dan penerimaan penghantaran tersebut oleh orang lain, untuk memenuhi bahagian kedua s 233 Akta bahawa sifat bahan yang dihantar adalah jelik atau lucuh, dilakukan dengan niat untuk menyakitkan hati dsb. Oleh itu, tempat pertuduhan yang betul adalah Mahkamah Sesyen Sepang dan bukannya Kuala Lumpur (lihat perenggan 22, 24, 28 & 32–33).]

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Cases referred to

Ahmad Abdul Jalil v PP [2015] 5 CLJ 480, HC (refd)

Gan Poh Chye v PP [1968] 1 MLJ 288 (refd)

Karnam Singh all Gubakhus Singh & Ors v PP [2019] 2 MLJ 480; [2018] MLRAU 430, CA (refd)

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PP v Muslim Ahmad [2013] 5 CLJ 822, HC (refd)

PP v Rutinin Suhaimin [2013] 2 CLJ 427, HC (refd)

Rutinin Suhaimin v PP [2014] 5 MLJ 282; [2015] 3 CLJ 838, HC (refd)

Legislation referred to

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Communication and Multimedia Act 1998 ss 233, 233(1), (1)(a), (1)(b)

Criminal Procedure Code ss 121, 153, 153(3)

Evidence Act 1950 s 114A

Kidnapping Act 1961 s 3

Penal Code s 365

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Printing Presses and Publications Act 1984 s 2

Subordinate Courts Act 1948 s 76(2)

Vagrancy Ordinance (SG) s 4(k)

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Saibullah M V Nathan & Co for the applicant.

Pejabat Timbalan Pendakwa Raya Bangunan Sultan Salahudin Abdul Aziz Shah for the respondent.

A Nurulhuda Nur'aini JC:

B [1] The applicant, through his counsel had put up a letter dated 22 October 2021 seeking for this court to exercise its revisionary power to revise the decision of the learned Sepang Sessions Court in dismissing the applicant's prayer for the case to be transferred to a Kuala Lumpur Sessions Court.

C [2] The applicant was arrested on suspicion of committing an offence under Communication and Multimedia Act 1998 ('the Act'), said to have been committed on 22 January 2021. He was charged on 23 June 2021 under s 233(1) of the Communication and Multimedia Act 1998 for improper use of applications service YouTube by uploading via his account, a video knowingly the making and initiating transmission of the video is offensive in nature with intent to annoy another person. The framed charge is annexed to the letter by counsel, referred above.

D [3] The charge sheet is silent as to where the said act of 'initiating transmission' took place but the details as to where it was uploaded being 'akaun Jufazli Shi Ahmad TV di pautan <https://youtu.be/DuWsHbE1mic>' and based on the submission by counsel, it was said to happen at the applicant accused's address of Cheras, Kuala Lumpur.

E [4] However, the charging in Sepang was based on the fact that the complainant read or saw this transmitted video in Cyberjaya, Sepang. This issue arose before the sessions court judge as to the right territorial jurisdiction and having heard submissions, the learned sessions court judge dismissed the applicant accused's prayer for the matter to be transferred to the Sessions Court Kuala Lumpur.

G ISSUES RAISED BY APPLICANT AND DECISION BY THIS COURT

[5] The applicant in his review letter to this court raised these arguments:

- H** (a) non-compliance with the provisions in s 153 of the Criminal Procedure Code ('the CPC') as the charge did not reflect where the uploading was done by the accused;
- (b) breach of s 121 of the CPC on local limits of jurisdiction as the accused's address is in Kuala Lumpur and not Sepang;
- I** (c) breach of the s 76(2) of the Subordinate Courts Act and case authority of apex court decision on territorial jurisdiction;
- (d) interest of justice that the accused be tried in Kuala Lumpur to avoid cost and safe travelling time;
- (e) s 153 of the CPC on 'publication' is not applicable as it is a different

element and a general law whereas the s 233 of the Communication and Multimedia Act 1998 on 'initiates transmission' is a specific Act. A

[6] This court having heard submissions by both parties, dismissed the application for the transfer and maintained the order given by the learned Sessions Court of Sepang. B

DELIBERATION ON THE ISSUES

[7] Section 233 of the Communication and Multimedia Act 1998 provides as follows: C

233 Improper use of network facilities or network service, etc.

(1) A person who —

(a) by means of any network facilities or network service or applications service knowingly — D

(i) makes, creates or solicits; and

(ii) initiates the transmission of, any comment, request, suggestion or other communication which is obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person; or E

(b) initiates a communication using any applications service, whether continuously, repeatedly or otherwise, during which communication may or may not ensue, with or without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at any number or electronic address, commits an offence. F

(2) ...

(3) A person who commits an offence under this section shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both and shall also be liable to a further fine of one thousand ringgit for every day during which the offence is continued after conviction. G

[8] The Bahasa Malaysia version of s 233 of the Act 588 as extracted from the LawNet is as follows: H

Seksyen 233 Penggunaan tidak wajar kemudahan rangkaian atau perkhidmatan rangkaian, dll.

1 Seseorang yang —

(a) dengan menggunakan mana-mana kemudahan rangkaian atau perkhidmatan rangkaian atau perkhidmatan aplikasi secara sedar — I

(i) membuat, mewujudkan atau meminta-minta; dan

(ii) memulakan penghantaran, apa-apa komen, permintaan, cadangan

- A atau komunikasi lain yang lucah, sumbang, palsu, mengancam atau jelik sifatnya dengan niat untuk menyakitkan hati, menganiyai, mengugut atau mengganggu orang lain; atau
- (b) memulakan suatu komunikasi dengan menggunakan mana-mana perkhidmatan aplikasi, sama ada secara berterusan, berulang kali atau selainnya, dan dalam masa itu komunikasi mungkin atau tidak mungkin berlaku, dengan atau tanpa mendedahkan identitinya dan dengan niat untuk menyakitkan hati, menganiyai, mengugut atau mengganggu mana-mana orang di mana-mana nombor atau alamat elektronik, melakukan suatu kesalahan.
- B
- C

[9] To begin with, s 233 of the Communication and Multimedia Act 1998 caters for:

- (a) the commission of an act of 'makes or creates or solicits' material;
- D (b) the act is followed with 'initiating transmission' of the material;
- (c) the material is of 'obscene ... or ... or offensive material'; and
- (d) done 'with intent to annoy, abuse, threaten or harass another person'.

E MEANING OF INITIATE TRANSMISSION

[10] Counsel for the applicant submitted that the offence is not one of 'publication' as provided for by s 153(3) of the CPC but the key words in the s 233 of the Communication and Multimedia Act 1998 offence being 'initiate transmission'. Furthermore, the CPC is a law of general application whilst the Communication and Multimedia Act 1998 is a specific law hence triggers the rule on *specialibus generalia non derogant*.

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[11] The gist of the submission of counsel is that the word 'initiate' means the preliminary action or starting point of the whole action of transmitting. This means the place where the accused had started it all. To this effect, on referral by this court to the *Oxford Dictionary* (9th Ed) states that the word 'initiate' means 'begin, set going, originate'.

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[12] Counsel for the applicant highlighted to this court that there is no case authority on this point as none had specifically encountered this issue. This court, having studied some of the reported cases, agreed with the counsel that there has been no determination by any courts on this point and the practice of the prosecution seems to differ as to where the legal jurisdiction should be, whilst a few cases centered on the constitutionality of s 233 of the Communication and Multimedia Act 1998.

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[13] Some of the reported cases analysed by this court are as follows:

No	Case	Court Facts
1	Ahmad Abdul Jalil v Public Prosecutor [2015] 5 CLJ 480, charged at Sessions Court Johore	Initiate transmission at RD Resources Sdn Bhd, No 30–3, Jalan Wangsa Delima II, Seksyen 5, 53300 Wilayah Persekutuan Kuala Lumpur. Offensive comment against Sultan Johore.
2	Rutinin Suhaimin v Public Prosecutor [2015] 3 CLJ 838, charged at Sessions Court Sabah	Initiate transmission at Blok A, Lot 4 kedai SEDCO 89300 Kundasang, Ranau, Sabah. Offensive comment against Sultan Perak.
3	Public Prosecutor v Muslim Ahmad [2013] 5 CLJ 822, charged at Sessions Court KL	Initiate transmission at No 1, Jalan 5/26, Taman Sri Rampai, Setapak, dalam Wilayah Persekutuan Kuala Lumpur. Offensive comment against: ‘Sultan, di Portal Rasmi Kerajaan Negeri Perak’.

[14] The judgment of Richard Malanjum CJ (Sabah and Sarawak) (as he then was) in *Rutinin Suhaimin v Public Prosecutor* [2014] 5 MLJ 282; [2015] 3 CLJ 838 on a s 233 of the Communication and Multimedia Act 1998 is worth and relevant to be highlighted. In *Rutinin*, the appellant was initially acquitted by the sessions court on s 233(1)(a) of the Communication and Multimedia Act 1998 (see *Public Prosecutor v Rutinin Suhaimin* [2013] 2 CLJ 427). However, on appeal before the first High Court judge, the learned High Court judge ordered for the defense to be called. Richard Malanjum CJ (Sabah and Sarawak) was of the view that the High Court judge when calling for the defense, focused on s 233(1)(b) of the Communication and Multimedia Act 1998, instead of 233(1)(a) as proffered in the charge.

[15] This is what Richard Malanjum CJ (Sabah and Sarawak) said at p 282 (MLJ); p 842 (CLJ):

The decision in the first appeal

[9] Section 233(1)(b) is included above because although the charge preferred against the appellant was under s 233(1)(a) the learned High Court judge premised his decision under (b).

[10] This is what he said, inter alia:

... The crucial ingredient of this offence is as follows:

- (a) that the accused person had made the communication in question through a network facility; and
- (b) the communication was made with ‘with intent to annoy, abuse, threaten or harass any person’.

The learned sessions court judge should have therefore considered whether:

- A** (a) on the evidence adduced by the prosecution, whether direct or circumstantial, he could rule that the accused person initiated the communication in question;
- (b) whether the communication in question, ie ‘Sultan Perak sudah gilaaaaa!!!!’ is either annoying or abusive; and
- B** (c) whether the accused had intention to annoy or abuse any person.
- After having considered all the arguments of the learned DPP and learned counsel for respondent, it is my opinion that this appeal should be allowed.
- C** [11] In the course of preparing this judgment I noted the error. I directed therefore the Deputy Registrar Kota Kinabalu to call the parties and highlight the issue and to find out their respective stands. Both parties indicated that they did not wish to raise the issue and agreed that this court should proceed to judgment. As such I decline to make any ruling or finding on the issue.
- D** [16] Although no further deliberation carried out by Richard Malanjum CJ (Sabah and Sarawak) on this error, this court is of the view the perusal of the words in s 233 itself will show the difference. This is discussed in the following paragraphs of this judgment onwards.
- E** [17] The word ‘initiate transmission’ in s 233 or the Bahasa Malaysia version is ‘memulakan penghantaran’. The crucial issue is whether the word ‘publication’ in s 153(3) means something else. Section 153(3) of the CPC provides as follows:
- F** Section 153 Particulars as to time, place and person.
- (1) The charge shall contain such particulars as to the time and place of the alleged offence and the person, if any, against whom or the thing, if any, in respect of which it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged.
- G** (2) ...
- (3) When the accused is charged with an offence relating to publication by electronic means, the place of publication is where the publication is seen, heard or read by any person.
- H** [18] It is to be noted that the word ‘publication’ in s 153(3) in the Explanatory Statement (ES) of DR 17/2012 refers to ‘penyiaran’. The ES is as follows:
- I** 6. Fasal 7 bertujuan untuk meminda seksyen 153 Akta 593 untuk mengadakan peruntukan bahawa apabila seorang tertuduh dipertuduh dengan kesalahan yang berhubungan dengan penyiaran secara elektronik, tempat penyiaran ialah tempat penyiaran itu dilihat, didengar atau dibaca oleh mana-mana orang.
- [19] The word ‘publication’ is not defined by the CPC but the meaning of

the word 'publication' can be understood generally as found in s 2 of the Printing Presses and Publications Act 1984 which provides as follows:

'publication' includes —

- (a) a document, newspaper, book and periodical;
- (b) all written or printed matter and everything whether of a nature familiar to written or printed matter or not containing any visible representation;
- (c) anything which by its form, shape or in any manner is capable of suggesting words or ideas; and
- (d) an audio recording.

[20] Similarly, the word 'penyiaran' is not defined by the CPC or Communication and Multimedia Act but can be found in s 114A of the Evidence Act 1950 as follows:

114A Anggapan fakta dalam penyiaran

- (1) ...
- (2) ...
- (3) ...
- (4) Bagi maksud seksyen ini —
 - (a) ...
 - (b) 'penyiaran' ertinya pernyataan atau representasi, sama ada bertulis, bercetak, bergambar, filem, grafik, akustik atau bentuk lain yang dipaparkan pada skrin komputer.

[21] The English meaning of the word 'publication' is:

Section 114A Presumption of fact in publication.

...

(4) For the purpose of this section —

- (a) ... ; and
- (b) 'publication' means a statement or a representation, whether in written, printed, pictorial, film, graphical, acoustic or other form displayed on the screen of a computer.

[22] This court enquired parties that s 233 of the Act only concerns with 'initiation of transmission' of material that has the element of 'obscene or offensive' done to 'annoy and abuse'. Although the submission of counsel rightly so, initiation means 'the action of beginning something', this court is of the view that the purpose of provision s 233 is to address 'improper use of the network services or facilities' where the objective of s 233 is to eliminate

- A obscene or offensive material from passing through these networks but yet is not to act as a total prohibition by applying a general standard of morality of the man on the street as to what amounts to 'obscene or offensive'. Otherwise, a simple US cartoon 'The Simpsons' for example, by just taking some of the characters on its surface would be offensive from the manner the cartoons are dressed.
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- [23] It is also important to note the different words enacted in s 233 itself 'with intent to annoy, abuse, threaten or harass another person' in s 233(1)(a) and 'with intent to annoy, abuse, threaten or harass any person' in s 233(1)(b). This would probably be the distinction noted in the case of *Rutinin* (para [14] of this judgment).
- C

- [24] Hence, to this court's mind, under s 233(1)(a), to determine if the material is obscene or offensive, it must be tested against the person receiving the material at the end which the transmission was directed at to satisfy the word 'another person' whilst 'any person' in s 233(1)(b) would mean anybody in general viewing the transmission. Unless and until it is seen by the person at the end, the transmission would have no form be it in s 233(1)(a) or (b).
- D

- [25] The meaning of the phrases, next to be ascertained is the phrases 'with intent to annoy, abuse, threaten or harass another person'. As early as 1968, in *Gan Poh Chye v Public Prosecutor* [1968] 1MLJ 288, Winslow J hearing an appeal from a magistrate court conviction on a s 4(k) of the Vagrancy Ordinance (SG) that the accused appellant, at about 1.30am on 19 June 1967 at Jalan Novena Barat, being a suspected person, was found loitering with intent to commit a seizable and non-bailable offence, to wit, theft.
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- [26] The facts as extracted from the reported case is that PW1 (the police officer on antitheft rounds) was keeping watch from a telephone booth over a car park in which were many parked cars. The time was 1.15am and there was no sign of movement of any kind in the area. He noticed the appellant's car, which he drove, arrive slowly and make a U-turn and return in the direction of the observer and then park. His companion walked away from the car but the appellant did not. The companion looked into every car and tried to open the doors of about three cars. He waved to the appellant, whereupon the appellant walked towards his companion and stopped to talk to him. He also looked into all the cars. The friend walked away. The appellant started meddling with the door of a car. The police officer moved forward stealthily and saw him with a screw driver in his hand at work over the car door. He declared himself.
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- [27] Winslow J in deliberating this point found as follows:

In my opinion, assuming these facts, he became a suspected person, at least at the stage when he left his car and walked towards his companion on receiving a signal

- from him. The companion was already suspected and what would be more natural than to suspect a person responding to another suspected person's signal in the particular circumstances? A
- It was when the appellant reached his companion and when he started looking into all the cars that his own acts of loitering with intent began. B
- I have tried to draw the dividing line between antecedent conduct which causes a person to be a suspected person and acts which amount to loitering with intent and this line is not always easy to draw. It may well be arguable that all his earlier acts merely show loitering with intent and that the appellant was never suspected until he brought out his screw driver in order to open the door. If that view is taken then of course no offence under the particular section of the Vagrancy Ordinance would have been committed. But that would, in my respectful opinion, be an untenable view. C
- [28] Thus, what is crucial to note is that the words 'with intent' carries some duty on the prosecution to prove by available evidence the said element of the actus reus. The distinct positive act in *Gan Poh Chye* as extracted in the above quote is the act of the accused looking into the cars that satisfy the 'loitering with intent'. D
- [29] Similar words 'with intent' are found in s 3 of the Kidnapping Act as follows: E
- Section 3 Abduction, wrongful restraint or wrongful confinement for ransom.
Whoever, with intent to hold any person for ransom, abducts or wrongfully confines or wrongfully restrains such person shall be guilty of an offence and shall be punished on conviction with death or imprisonment for life and shall, if he is not sentenced to death, also be liable to whipping. F
- [30] Section 365 of the Penal Code equally carry the same element 'with intent to cause that person to be secretly and wrongfully confined' as follows: G
- Section 365 Kidnapping or abducting with intent secretly and wrongfully to confine a person.
Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine. H
- [31] In *Karnam Singh all Gubakhus Singh & Ors v Public Prosecutor* [2019] 2 MLJ 480; [2018] MLRAU 430, the Court of Appeal in addressing the s 3 of the Kidnapping Act and s 365 of the Penal Code and the evidence adduced, found that offence as charged was proven based on the following: I
- [59] There is no ring of truth in the appellants' claim that their intention was only to rob SP2 and not to kidnap him for ransom. This claim goes against all probabilities of the case. It has to be a figment of their imagination as SP2 was never

- A robbed of his money. The RM1m was demanded and obtained as ransom for SP2's release and not money that was robbed from him.
- [60] Likewise for the second charge, the fact that SP3 was tied up and confined in the empty house after his abduction clearly shows that their common intention was to commit the offence specified in the second charge.
- B
- C [32] In short, based on these cases, what it shows is that the commission of the act to satisfy the 'with intent to annoy, abuse, threaten or harass another person' under s 233(1)(a) of the Act must be proven and the determination as to whether the content of the material, results with this outcome of 'annoy, abuse, threaten or harass' can only be known upon the other person which the transmission is directed at, reads or views the material. This only happens at the place where that other person sees this material.
- D [33] The different words used in all the laws as found in s 153(3) of the CPC, s 114A Evidence Act and s 233 of the Multimedia Communication Act boils to only one result that is since the material in s 233 ought to be one that is either offensive or obscene and it can only be determined by 'another person' that is the victim and this can only be done when the victim 'view or hear or read' the said material, the conclusion by this court is that s 233 is a combination of
- E 'transmission' at the first limb of s 233 of the Act and the receiving of the said transmission by the other person, to satisfy the second limb of s 233 that the nature of the material transmitted being offensive or obscene, done with intent to annoy etc.
- F
- G [34] Logically, messages or video transmitted may not be physically present to be viewed or seen by the receiver unless it has reached the person at the end of the transmission. It is still open to the sender or owner or maker of the video to delete the video before it is viewed by the receiver. This decision is arrived at without relying on s 153(3) of the CPC as the CPC is a general law, contrary to the Communication and Multimedia Act. From the debate in Parliament, the minister himself agreed when he said the following (Penyata Rasmi Parlimen Kedua Belas Dewan Rakyat Bil 20 of 17 April 2021 Penggal Kelima Mesyuarat Pertama at p 127):
- H
- I Perkembangan yang pantas dalam penggunaan internet dan teknologi maklumat pada masa kini telah membawa kepada berleluasanya aktiviti jenayah siber dan kesalahan jenayah yang dilakukan melalui internet. Untuk mengatasi masalah dan kelemahan yang wujud akibat kelompongan undang-undang berkaitan dengan aktiviti jenayah siber dan kesalahan jenayah yang dilakukan melalui internet, Kanun Tatacara Jenayah perlu dipinda bagi menangani isu pengumpulan data dan maklumat serta pembuktiannya di mahkamah. Rang undang-undang ini akan memasukkan peruntukan untuk memberi polis kuasa untuk mengakses data berkomputer dan kuasa untuk memintas komunikasi. Pada masa ini kuasa polis atau pegawai penguatkuasa untuk mengakses data berkomputer semasa

menjalankan siasatan hanya terdapat dalam undang-undang spesifik seperti Akta Jenayah Komputer, Akta Komunikasi dan Multimedia dan akta-akta spesifik yang lain.

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Oleh yang demikian, kuasa untuk mengakses data berkomputer patut juga diperuntukkan dalam Kanun Tatacara Jenayah untuk membolehkan polis dan agensi penguatkuasaan yang lain mengakses data berkomputer semasa menjalankan siasatan yang melibatkan kesalahan-kesalahan umum yang bukan di bawah akta-kata spesifik.

B

[35] For these reasons, this court is not in agreement with the submission by the applicant accused that the right locality of the charge should have been the Sessions Court Kuala Lumpur and not Sepang. In the upshot, the application for the transfer of the case to Kuala Lumpur is dismissed. Case to proceed to be heard in Sessions Court Sepang.

C

Application dismissed.

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Reported by Nabilah Syahida Abdullah Salleh

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